

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2013-42-S**

IN RE: Application of Palmetto Utilities, Inc.,)
 For adjustment of rates and charges for,)
 and Modification to Certain Terms and)
 Conditions Related to, the Provisions of)
 Sewer Service.)
_____)

**PARTIAL PROPOSED ORDER OF
SENSOR ENTERPRISES, INC. AND J-RAY, INC.**

This matter comes before the Public Service Commission of South Carolina (“the Commission”) on the Application, filed on March 12, 2013, of Palmetto Utilities, Inc. (“Palmetto”) for approval of a new schedule of rates and charges and for modification to certain terms and conditions for the provision of sewer service in certain areas of Richland and Kershaw Counties.

FINDINGS OF FACTS AND SUPPORTING EVIDENCE

As part of its Application, Palmetto proposes to charge commercial customers a rate of \$39.00 per single family equivalent. Palmetto proposes to utilize the South Carolina Department of Health and Environmental Control’s Guidelines for Unit Contributory Loading for Domestic Wastewater Treatment Facilities, 25 S.C. Code Ann. Regs. 61-67 Appendix A (Supp. 2010), as the basis for calculating the number of single family equivalents attributable to each commercial customer.

Two commercial customers (collectively “Interveners”) have intervened in this rate case, Sensor Enterprises, Inc. (“Sensor”) and J-Ray, Inc. (“J-Ray”). Both of these customers own McDonald’s restaurants within Palmetto’s service area. Mike Pippin testified at the hearing on behalf of Sensor, and Chris Valdes testified on behalf of J-Ray. Mr. Pippin and Mr. Valdes

testified that prior to the filing of this most recent Application by Palmetto, Sensor and J-Ray consistently received sewer charges from Palmetto of approximately \$401.52 per month and \$806.86 per month, respectively. If Palmetto's rate increase is approved as requested, Sensor and J-Ray face sewer charges of \$5,266.80 per month and \$5,065 per month, respectively. These are increases of 1,311% and 627%. Under the rates in Palmetto's Application, both customers would pay an increased amount of more than \$50,000.00 per year for sewer service.

Because the manner in which Palmetto proposes to charge the Interveners is based in part upon the number of drive-thru cars per day, Mr. Pippin and Mr. Valdes also provided testimony regarding the number of cars that utilize the drive-thru at each of their stores. Mr. Pippin testified that the actual number of cars served per day at the Sensor store is 1,035. Palmetto originally estimated the number of cars at the Sensor store at 1,400 per day. Fred Melcher testified that Palmetto subsequently reduced its estimate of the number of cars for the Sensor store to 1,225 but that this number included a multiplier of 120%.

Mr. Valdes testified that the actual number of cars served per day at the J-Ray store is 1,141. Palmetto originally estimated the number of cars at the J-Ray store at 1,400 per day. Fred Melcher testified that Palmetto subsequently increased its estimate of the number of cars for the J-Ray store to 1,635 and that this number also included a multiplier of 120%.

Sensor and J-Ray retained David Russell as an expert witness to testify regarding the reasonableness of the rates proposed by Palmetto and to propose alternate methods of assessing sewer rates for Sensor and J-Ray.

Alternative I

Mr. Russell testified that the rate increases faced by the Interveners under the Application are unjust and unreasonable because they do not reflect the relative cost of providing sewer

service to the Interveners. Water usage is a reasonable proxy for the volume of wastewater flow because no more wastewater will be discharged than water consumed. Mr. Pippin and Mr. Valdes testified that both restaurants comply with all requirements for grease trap installation and maintenance.

If the Interveners are charged for sewer service as provided for under the Application, this would equate to an assumed water usage of 1,824,000 gallons per month for Sensor and 1,842,000 gallons per month for J-Ray. Based upon prior months' billing records, Sensor and J-Ray demonstrated that they use only 85,667 gallons per month and 107,000 gallons per month, respectively, on average. Mr. Pippin and Mr. Valdes testified that they can obtain monthly water billing records for their water service providers and provide that information to Palmetto without difficulty.

Mr. Russell testified that the relative cost of wastewater service can be estimated by water usage and that billing for sewer services based upon water usage is a fair and reasonable alternative to using single family equivalents as proposed in the Application. The Interveners provided multiple months of actual water usage information in the pre-filed testimony of Mr. Pippin, Mr. Valdes, and Mr. Russell. Based upon that information, the monthly charge for sewer service to Sensor and J-Ray, assuming a generous 120,000 gallons of monthly water usage, would be approximately \$400.00.

Alternative II

Mr. Russell testified that the rate increases faced by the Interveners are unjust and unreasonable because the Unit Contributory Loading Guidelines, which provide the basis for single family equivalent calculations, do not accurately represent the amount of wastewater

produced by a drive-thru restaurant. Even Palmetto concedes that a hydraulic loading factor of 40 gallons per day per car is unreasonable. Based upon the average monthly water usage for the Interveners, Mr. Russell calculated that the appropriate hydraulic loading factors for a drive-thru restaurant should be 2 gallons per day per car and 10 gallons per day per seat.

In calculating sewer charges for a drive-thru fast food restaurant based upon the Unit Contributory Loading Guidelines, an accurate estimate of the number of cars passing through the drive-thru each day is critical. Because the operators of the restaurants are able to obtain exact numbers of cars passing through the drive-thru each day rather than merely estimates, the Commission finds that the car counts provided by Mr. Pippin and Mr. Valdes are more credible than any of the estimates provided by Palmetto.

Prior to the pre-filing of Mr. Russell's testimony, Palmetto and the ORS reached a settlement agreement reducing the charge for each single family equivalent to \$36.00 from the proposed \$39.00. Sensor and J-Ray are not parties to this settlement agreement; however, the reduced rate of \$36.00 per single family equivalent, if approved by this Commission, would apply to them. The settlement agreement also proposes to reduce the per car hydraulic loading factor for drive-in restaurants from 40 gallons per day to 10 gallons per day.

Using the terms under the settlement agreement, Palmetto would charge Sensor and J-Ray approximately \$1,509.30 per month and \$1,755.72 per month for sewer service. These rates represent increases of 376% and 217% in sewer charges for Sensor and J-Ray, respectively. The rate increase to residential customers under the settlement agreement is 9%.

CONCLUSIONS OF LAW

The Public Service Commission is vested with the authority and jurisdiction to regulate the rates of public utility providers. S.C. Code Ann. § 58-5-210 (1976 & Supp. 2012). “It is generally stated that ‘the governing principle for determining rates to be charged by a public utility is the right of the public on one hand to be served at a reasonable charge, and the right of the utility on the other to a fair return on the value of its property used in the service.’” *Southern Bell Tel. & Tel. Co v. Public Service Commission*, 270 S.C. 590, 595, 244 S.E. 2d 278, 281 (1978) (internal citation omitted). “[The Commission’s] ratemaking function, moreover, involves the making of ‘pragmatic adjustments’ . . . Under the statutory standard of ‘just and reasonable’ it is the result reached, not the method employed which is controlling.” *Id.* (quoting *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) (alterations in original)).

The rate increases proposed in the Application of 1,311% for Sensor and 627% for J-Ray are so unjust and unreasonable as to result in “rate shock.” Even the increases that Sensor and J-Ray would face under the proposed settlement agreement —376% and 217%—far exceed the increase applicable to residential customers. It is unjust and unreasonable for a utility to force a particular category of commercial customers to shoulder such a disproportionate share, even as proposed in the settlement agreement, of the utility’s revenue requirement.

Alternative I

1. We conclude that use of the Unit Contributory Loading Guidelines for the Interveners is unjust and unreasonable in this case.
2. We conclude that billing the Interveners for sewer service based upon their actual water usage is just and reasonable. Palmetto’s main objection to billing based upon water usage

was the difficulty in obtaining water usage data for the Interveners. However, the Interveners presented convincing evidence that they are willing and able to provide water usage data to Palmetto on a regular basis. Accordingly, we find that Palmetto is able to obtain the data necessary for billing based upon water usage.

Alternative II

1. We conclude that use of the current Unit Contributory Loading Guidelines is unreasonable in this case.

2. We conclude that the Unit Contributory Loading Guidelines as proposed to be modified by Palmetto—10 gallons per day per car—remains unjust and unreasonable. The formula utilized by Palmetto in arriving at that proposal is flawed in its inflation of more than one factor by 120% and by use of data from two different utilities.

3. We conclude that the Unit Contributory Loading Guidelines as modified by the Interveners— 2 gallons per day per car and 10 gallons per day per seat—is just and reasonable.

IT IS THEREFORE ORDERED THAT:

Alternative I

1. The Interveners shall provide monthly water usage data to Palmetto, and Palmetto shall bill the Interveners for sewer service based upon the number of single family equivalents of water that are in fact used by the Interveners.

Alternative II

1. Palmetto shall calculate the single family equivalents for sewer service for the Interveners based on the Unit Contributory Loading Guidelines as modified by the Interveners— 2 gallons per day per car and 10 gallons per day per seat.

2. Palmetto shall utilize the car counts provided by Sensor and J-Ray without including a 120% increase.

3. This Order shall remain in full force and effect until further Order of the Commission.